Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Amendment of Parts 2 and 15 of the Commission's Equipment Authorization Requirements for Digital Devices	)))))	ET Docket No. 95-19

COMMENTS OF THE ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.

The Association for Maximum Service Television, Inc. ("MSTV") hereby files comments in response to the Notice of Proposed Rulemaking, ET Docket No. 95-19, released in the above captioned docket on February 7, 1995 (the "Notice").[1/]

INTRODUCTION

The Commission proposes to revise its certification policies for personal computers and peripheral devices by abolishing Commission-sponsored certification of these devices in favor of a self-certification procedure. Notice, at ¶¶ 3, 6; cf. 47 C.F.R. § 2.901 et seq. (1994). Under the proposed new rules, any lab accredited by the National Institute for Standards and Technology ("NIST") as being in compliance with its National Voluntary Laboratory Accreditation Program would be permitted to conduct the testing necessary for self-certification. Id. at ¶ 8. The Commission has also announced its intention to reallocate staff to increase its random

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1/ MSTV is a non-profit trade association of local broadcast television stations committed to achieving and maintaining the highest technical quality for the public's local broadcast service. MSTV has a longstanding and vital interest in ensuring that the public continues to enjoy access to free, universal, over-the-air television broadcasting.

inspection program to ensure that licensed operations do not experience interference from electronic devices, including personal computers. Id. at ¶ 10. Finally, the Commission seeks comment on whether it should permit manufacturers to test component parts of personal computers without testing particular combinations of components. Notice, at ¶ 18.

MSTV believes that the proposed new rules and procedures are almost certain to result in more noncompliant computers and peripheral equipment reaching U.S. consumers. Unlicensed RF-producing devices, such as computers and peripheral devices, can (and often do) cause interference to licensed operations, including over-the-air reception of television broadcasts. The Commission's present certification procedures protect licensed operations from these sources of interference. Because of the dangers associated with the widespread sale and use of non-compliant devices, any alternative to the current certification process must be no less protective of licensed operations than the existing certification procedure.

I. THE CERTIFICATION PROCESS SERVES AN IMPORTANT PUBLIC INTEREST.

The Notice proposes the abolition of the Commission's certification process[2/] in order to permit the domestic computer industry to avoid some of the costs and delay associated with the process. However, the Notice fails

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2/ See 47 C.F.R. § 2.901 et seq.

to acknowledge properly the importance of the certification process, or the reasons that led the Commission to adopt its certification program in the first place. "[T]he demonstrated ability of the existing authorization [and certification] procedures to minimize the amount of interference-causing equipment reaching the marketplace should not be overlooked." In the Matter of Amendment of Part 2 of the Rules to Simplify the Equipment Authorization Process, 56 R.R. 2d (P & F) 1607, 1612 (1983).

The Commission instituted the certification process for computers and computer peripheral devices because at least some of these devices, if untested, would be sold to the public notwithstanding the fact that they cause harmful interference to licensed operations. Thus, the "fundamental purpose" of the equipment authorization rules is the protection of licensed operations from spurious RF emissions generated by unlicensed devices. See In the Matter of Revision of Part 15 of the Rules Regarding the Operation of Radio Frequency Devices Without an Individual License, 6 FCC Rcd 1683, 1686 (1991); see also In the Matter of Exemption of Certain Radio Devices to Be Used By Law Enforcement Agents, 6 FCC Rcd 3392, 3393 (PRB/OET 1991) (refusing to exempt public safety equipment from testing requirements "in order to protect the public from the potential of harmful interference").

Equipment subject to Commission certification procedures "is placed in that category because there is sufficient risk of interference if noncompliance occurs that scrutiny of measurement results by the Commission is warranted." Operation of Radio Frequency Devices Without an Individual License, 6 FCC Rcd at 1686. The certification process ensures that noncompliant devices do not reach locations where they will cause interference to pre-existing services licensed by the Commission as being in the public interest.[3/]

There is little reason to believe that the need for vigilance regarding the sale of noncompliant RF-producing devices is any less pressing today. On the contrary, MSTV believes that the highly competitive nature of the computer industry -- including the tremendous financial pressures that push manufacturers to rush new products to market -- serve to increase the risk that noncompliant devices will find their way into the marketplace.

Significantly, the Notice does not contain findings that the danger of interference from the operation of computers and peripheral devices has been reduced or eliminated. In the absence of record evidence demonstrating that the risk of interference from computers and computer

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[3/] See, e.g., In the Matter of Ace Communications, 9 FCC Rcd 3084, 3084 (FOB 1994) (imposing sanctions on company that marketed equipment without first obtaining certification of compliance with the Commission's interference rules).

peripheral devices no longer poses a danger to licensed operations, MSTV believes that it would be imprudent to abandon an independent system of verifying that unlicensed devices, including computers and peripherals, are in compliance with the Commission's rules.

II. INDEPENDENT, UNBIASED CERTIFICATION TESTING BOTH IS PRUDENT AND SERVES THE PUBLIC INTEREST.

It is not possible to abandon the Commission-sponsored certification program unless the system of voluntary compliance that replaces it effectively ensures that an impartial entity is responsible for determining that every RF-producing device imported and/or sold in the United States complies with the Commission's interference rules. For example, the consumer electric appliances industry relies on the Underwriters Laboratories ("UL") to conduct safety evaluations of electric consumer goods. The UL review process is independent of both the government and particular manufacturers, and has reliably served the interests of both manufacturers and consumers for many years.[4/]

[4/] See Williams, "Privatized Safety Could Save Millions," The Cincinnati Enquirer, January 22, 1995, at § E, p. 3 (arguing that UL provides a paradigm for private regulation of consumer goods); Everly, "Underwriters Laboratories: Do We Expect Too Much from That Reassuring Symbol?," The Kansas City Star, January 8, 1995, at § F, p. 1 ("Underwriters Laboratories is arguably the most important arbiter of safety standards for the electrical products that consumers use"); Harris, "No Bureaucrats," The Atlanta Constitution, September 3, 1994, at § A, p. 15 (describing UL's performance as "superb").

Under the proposed rules, any NIST-accredited lab would be permitted to certify that a particular RF-producing device complies with the National Voluntary Laboratory Accreditation Program standards. Notice, at ¶ 8. At present, there are around twenty NIST-accredited labs. Id. at ¶ 9. Because of the scarcity of NIST-accredited labs, the Commission proposes a two-year transition period during which it would continue to conduct certification inspections until new labs are available, perhaps including labs maintained by manufacturers. Id. at ¶ 9.

MSTV does not question the reliability of NIST accreditation standards. The question, however, is not whether the NIST standards are sufficient to ensure reliable results, but rather whether all NIST-accredited labs will consistently and reliably observe NIST standards when testing new products. Of particular concern to MSTV are NIST-accredited labs that are directly affiliated with manufacturers of computers and computer peripheral devices.

Self-certification is a viable alternative to Commission certification only if self-certifications rest on scientifically sound evaluations of the interference characteristics of particular devices. Plainly, there is a non-trivial risk of bias on the part of lab employees who work directly for a manufacturer who wishes to market a particular device as soon as possible. No manufacturer should be permitted to serve as the judge and jury in its own case,

particularly when the harm from the sale of non-compliant devices falls entirely on those providing licensed services, and where detection and punishment is likely to be problematic. Self-certification testing must not be conducted in laboratories that have a financial interest in the release date of the devices being tested.

III. RANDOM INSPECTIONS SHOULD BE INCREASED.

In the Notice, the Commission announces its intention to reallocate staff to increase its random inspection program to ensure that licensed operations do not experience interference from electronic devices, including personal computers and peripheral devices. Id. at ¶ 10. MSTV applauds this and all similar efforts to ensure that unlicensed devices do not cause harmful interference to licensed operations, including television broadcasting.

However, MSTV cautions that an ounce of prevention is worth (at least) a pound of cure. It is well known that pinpointing the source of interference to television reception can be very difficult, if not impossible. For example, most consumers are unable to trace sources of interference, and are unlikely to seek outside assistance in resolving interference problems caused by spurious RF emissions from devices such as personal computers and peripheral devices. In consequence, an increased program of spot-checks cannot serve as a meaningful

substitute for ensuring that devices are in compliance with the Commission's rules before they are mass-marketed.[5/]

IV. MODULAR DEVICES SHOULD BE TESTED.

The Notice seeks comment on whether the rules should permit manufacturers to test component parts of personal computers without testing particular combinations of components. Notice, at ¶ 18. Obviously, the combination of different component devices could seriously affect the interference characteristics of the complete personal computer. MSTV therefore does not support this proposal, because such a policy would be significantly underprotective of licensed operations.

To be sure, the Notice proposes a margin of safety by mandating that all modular personal computers come in enclosures that protect against interference within 6dB from 30 Mhz to 1000 Mhz. Id. at ¶ 22. Although the increased shielding requirement might be sufficiently protective in some cases, absent formal testing one cannot be certain that a particular combination of components does not have a synergistic effect that causes interference to licensed operations.

[5/] Congress' recent and pronounced interest in reducing the size and number of federal agencies must also be considered. Congressional budget-cutting could severely circumscribe the Commission's ability to allocate staff to police the airwaves against noncompliant RF-producing devices, notwithstanding the Commission's firm intention to increase its enforcement activities.

Furthermore, there is no good reason for exempting modular systems from certification testing (particularly if the Commission abandons its certification program in favor of a self-certification program). MSTV believes that the Commission should not excuse manufacturers from conducting testing to determine whether a particular combination of components causes interference to licensed operations.

CONCLUSION

MSTV is sensitive to the concerns of computer manufacturers who wish to market their new products on a timely basis. However, the Commission established its certification program to further an important public policy: the protection of licensed operations from spurious RF emissions. Any proposal for reforming the certification program must afford licensed operations no less protection than existing Commission-sponsored certification program.

Respectfully submitted,

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